

CALIFORNIA RECYCLING AND PLASTIC POLLUTION REDUCTION ACT OF 2020

SEC.1. Title.

This measure shall be known and may be cited as the "California Recycling and Plastic Pollution Reduction Act of 2020."

SEC.2. Findings and Declarations

The People of the State of California find and declare all of the following:

(a) Annual global production of plastic has reached 335 million tons and continues to rise. In part due to increased availability of and reliance on fossil fuel resources, global plastic production is projected to more than triple by 2050, which would account for 20 percent of all fossil fuel consumption.

(b) Nearly 9 million tons of plastic enters the ocean each year globally. Without action, the amount of plastic entering the ocean each year will double by 2025. Researchers have found deadly levels of plastic pollution in the guts of seabirds, sea turtles, and marine mammals, including whales and dolphins.

(c) Most plastics are petrochemicals made from hydrocarbons derived from fossil fuels. Production of these materials contributes to climate change and furthers our reliance on nonrenewable resources. Litter of these plastics constitutes a form of oil pollution spilling into our oceans and contaminating our environment.

(d) Local taxpayers in California annually spend in excess of four hundred twenty million dollars (\$420,000,000) in ongoing efforts to clean up and prevent plastic and other litter from entering our rivers and streams and polluting our beaches and oceans.

(e) Large and small plastic particles are increasingly found in streams, rivers and coastal ecosystems degrading habitat conditions for wildlife and contaminating fish, plants and other organisms. Plastic particles have also been found in drinking water, bottled water, table salt, and fish and shellfish from local California fish markets.

(f) Disadvantaged and low-income communities are disproportionately impacted by the human health and environmental impacts of plastic pollution and fossil fuel extraction.

(g) California's commitment to recycling has created 125,000 jobs and provides the raw materials necessary to support manufacturing businesses.

(h) As the fifth largest economy in the world and a global center of innovation, California has a responsibility and ability to lead on solutions to the growing plastic pollution crisis and waste reduction generally.

(i) Further, businesses selling products in and into California have a responsibility to minimize waste and ensure their products and packaging are reusable, recyclable, or compostable and do not enter the environment.

SEC.3. Purpose and Intent.

It is the intent of the People of the State of California to do all of the following with this measure:

(a) Reduce the sources of plastic pollution and its impacts on the state's ocean, coastal and freshwater environments and communities.

(b) Reduce the amount of single-use plastic packaging and single-use plastic foodware waste generated in the state.

(c) Reduce our reliance on fossil fuels and move towards renewable materials, including biobased products.

(d) Develop long term incentives to maintain and increase recycling, composting, reuse, and remanufacturing infrastructure.

(e) Reduce the cost to local governments, ratepayers, and the state to achieve the state's recycling and composting goals.

(f) Promote the design and deployment of reusable and refillable systems and other innovations for packaging and single-use plastic foodware.

(g) Increase the use of recycled and renewable materials in the production of single-use foodware and single-use plastic packaging.

(h) Mitigate and abate the impacts of plastic pollution, solid waste disposal, and litter on the state's natural environment and communities.

(i) Restore and protect streams, rivers, beaches, coastal and ocean environments impacted by plastic pollution and other toxins associated with plastic materials.

(j) Increase the recycling of food scraps, yard trimmings and other organic waste, recover edible food for human consumption, increase the production and use of compost, and provide financial incentives and technical assistance to deploy a diversity of healthy soils and water-smart practices, including compost applications, which increase carbon sequestration, reduce greenhouse gas emissions and provide multiple air and water quality benefits.

(k) Producers shall be responsible for ensuring that, to the maximum extent possible, single-use plastic packaging and single-use foodware pollution and waste is reduced,

recycled, or composted, and by the year 2030, the amount of California-generated single-use plastic packaging and single-use foodware waste that is disposed shall be reduced by 80 percent compared to 2020 levels, as determined by the Department.

(l) Require the producers of single-use plastic packaging to pay for cleanup of plastic pollution and management of plastic waste by imposing a fee on single-use plastic packaging and single-use plastic foodware.

(m) Relieve local governments and taxpayers from the costs of single-use plastic packaging waste by establishing a California Plastic Pollution Reduction Fund, which would support local public works infrastructure and litter abatement activities, composting, recycling, reuse, and environmental restoration.

(n) Nothing in this initiative is intended to impose new increased costs to state or local governments.

SEC. 4. Chapter 6.1 (Commencing with Section 42380) is added to Part 3 of Division 30 of the Public Resources Code, to read:

42380 For purposes of this Act, the following definitions apply:

(a) "California Plastic Pollution Reduction Fee" means the fee imposed pursuant to Section 42382(a).

(b) "Department" shall mean the California Department of Resources Recycling and Recovery.

(c) "Disadvantaged community" means a community identified as disadvantaged pursuant to Health and Safety Code Section 39711.

(d) "Expanded polystyrene food service container" means a container made primarily of expanded polystyrene and used in the restaurant and food service industry for serving or transporting prepared, ready-to-consume food or beverages, including, but not limited to, plates, cups, bowls, trays, and hinged containers. "Expanded polystyrene food service container" does not include packaging for unprepared foods.

(e) "Food vendor" means an establishment that provides prepared food for public consumption on or off its premises, and includes, but is not limited to, a store, shop, sales outlet, restaurant, grocery store, supermarket, delicatessen, catering truck or vehicle, any other person who prepares prepared food, and any organization, group, or individual that provides food as part of its services.

(f) "Low-income communities" are census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold established pursuant to Health and Safety Section 50093.

(g) "Low-income households" are those with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold established pursuant to Health and Safety Code Section 50093.

(h) "Person" means a natural person, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other entity.

(i) "Plastic" means a synthetic material chemically formed by the polymerization of organic substances that can be molded or extruded at high heat into various solid forms that may be solid, porous, flexible, or rigid, including elastomers, fibers, adhesives, and surface coatings, as those terms are defined by the Department.

(j) "Priority population" means disadvantaged communities, low-income households, and low-income communities.

(k) (1) "Producer" means the person who manufactures the single-use plastic packaging or single-use plastic foodware items under that person's own name or brand or who sells or offers for sale the single-use plastic packaging or single-use plastic foodware item.

(2) If there is no person who is the producer of the single-use plastic packaging or single-use plastic foodware for purposes of paragraph (1) of this subdivision, the producer is the person who imports the single-use plastic packaging or single-use plastic foodware as the owner or licensee of a trademark or brand under which the single-use plastic packaging or single-use plastic foodware is sold or distributed in the state.

(3) If there is no person who is the producer for purposes of paragraphs (1) and (2) of this subdivision, the producer is the person that offers for sale, sells, or distributes the single-use plastic packaging or single-use plastic foodware in the state.

(l) "Single-use plastic foodware" means single-use food service ware, made partially or entirely of plastic, such as plates, hinged containers, bowls, cups, utensils, stirrers, straws and lids, and similar products as determined by the Department.

(m) "Single-use plastic packaging" means the packaging or components of packaging material, made partially or entirely of plastic, including plastic coated paper, plastic coated paperboard, and multi-layer flexible packaging containing plastic used for the containment, protection, handling, delivery, or presentation of goods by the producer for the user or consumer, ranging from raw materials to processed goods. Packaging includes, but is not limited to, all of the following:

(1) Sales packaging or primary packaging intended to constitute a sales unit to the consumer at the point of purchase and most closely contains the product, food, or beverage.

(2) Grouped packaging or secondary packaging intended to brand or display the product.

(3) Transport packaging or tertiary packaging intended to protect the product during transport.

(4) Single-use plastic packaging shall not include material used for the containment of medical devices and prescription drugs as specified in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Secs. 321(h) and (g), and Sec. 353(b)(1)), infant formula, as defined in 21. U.S.C. Section 321(z), on-farm tertiary single-use plastic packaging, or reusable plastic packaging, as defined by the Department.

42381(a) The Department, in consultation with the California Environmental Protection Agency, the California Natural Resources Agency, the Ocean Protection Council, and the California Department of Tax and Finance Administration shall adopt regulations to implement and enforce this Act. Such regulations shall do all of the following:

(1) Place requirements on producers to ensure single-use plastic packaging and single-use plastic foodware is reusable, refillable, recyclable, or compostable by 2030. The Department shall, by regulation, define the terms reusable, recyclable, or compostable for purposes of this Act. In determining recyclability, the Department shall, at a minimum, consider whether a material type and form is regularly collected for recycling, sorted, and aggregated into defined streams, prior to being verifiably used in the production of new products. Combustion, fuel production, and other forms of disposal shall not constitute recycling of single-use plastic packaging and single-use plastic foodware.

(2) Place requirements on producers to reduce or prohibit single-use plastic packaging and single-use plastic foodware that the Department determines to be unnecessary for the delivery of a product or food item.

(3) Place requirements on producers to source reduce, by both weight and number of items, single-use plastic packaging and single-use plastic foodware sold in or into California to the maximum extent possible, and by no less than twenty-five percent (25%) by 2030. Source reduction shall not result in replacing a recyclable or compostable material with a nonrecyclable or noncompostable material. The Department shall, by regulation, develop a baseline by 2023 and a timeline for reduction to achieve the 2030 goal.

(4) Authorize the Department to require producers to use recycled content and renewable materials, as defined by the Department, in the production of single-use plastic packaging and single-use plastic foodware while ensuring recyclability or compostability.

(5) Establish mechanisms for convenient consumer access to recycling, including but not limited to take-back programs and deposits.

(6) Establish and enforce labeling standards to support the proper sorting of discarded single-use plastic packaging and single-use plastic foodware.

(7) Prohibit the distribution of an expanded polystyrene food service container by a food vendor.

(8) Consider the adoption of regulations to ensure the health and safety of all single-use plastic packaging and single-use plastic foodware, consistent with but not limited to the provisions of Chapter 6, commencing with 42370, of Part 3 of Division 30 of the Public Resources Code.

(b) Nothing in this subdivision shall be construed to impose any mandate upon a local government or local recycling provider.

(c) Producers shall register with the Department and submit data to the state that the Department deems appropriate to carrying out this chapter. Producers shall be responsible for proving compliance with these mandates.

(d) If the Department determines at any point that a single-use plastic packaging and single-use plastic foodware item cannot comply with a regulation established by the Department pursuant to section (a) due to health and safety reasons, because it is unsafe to recycle, or presents unique challenges and has no alternatives, the Department may exempt or provide an extension for that single-use plastic packaging or single-use plastic foodware from that regulatory requirement.

42382(a) The Department shall establish by January 1, 2022, and a producer shall pay, a California Plastic Pollution Reduction Fee, as determined by the Department, on all single-use plastic packaging and single-use plastic foodware destined for final sale in California. Such fee shall not exceed one cent (\$0.01) per item of single-use plastic foodware or single-use plastic packaging. Beginning January 1, 2030, the Department shall adjust annually thereafter the fee for inflation based on the California Consumer Price Index. The Department shall contract with the California Department of Tax and Fee Administration to administer, collect and enforce the fee established by the Department. Costs incurred by the California Department of Tax and Fee Administration for administering, collecting and enforcing the fee shall be paid by proceeds from the fee prior to distribution pursuant to subdivision (k).

(b) In determining the amount of the fee, the Department shall rely on the average net cost of recycling each material type and form, as determined by the Department, and the amount of each material type utilized by producers. For single-use plastic packaging and single-use plastic foodware that the Department determines is not currently recyclable or compostable, the amount of the fee shall be the equivalent of one cent (\$0.01) per item. The Department may update the amount of the fee no more than annually.

(c) Single-use plastic foodware and plastic packaging that are determined by the Department to be made wholly from plastic derived from renewable materials shall be subject to a fee that shall not exceed one-half cent (\$0.005) per item of single-use plastic packaging or single-use plastic foodware. Single-use plastic foodware and single-use plastic packaging that are made primarily from plastic derived from renewable materials shall be subject to a fee that shall not exceed three-quarters of one cent (\$0.0075) per item of single-use plastic packaging or single-use plastic foodware, as determined by the Department.

(d) A producer shall remit the fee assessed pursuant to this subdivision to the California Department of Tax and Fee Administration for deposit into the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury.

(e) The amount of the California Plastic Pollution Reduction Fee shall be paid by the producer of a single-use plastic foodware or single-use plastic packaging and shall not be passed on to consumers as a separate item on a receipt or invoice.

(f) The Department may adopt regulations for determining the amount of the fee for each material type, the schedule on which the fee is to be paid by a producer, and the methodology for adjusting the fee based on changes in the net cost of recycling, recyclability, or compostability. Regulations to adjust the fee shall be deemed to meet the description in subdivision (g) of Section 11340.9 of the Government Code and may be filed by the Department pursuant to Section 11343.8 of the Government Code.

(g) The Department of Finance may authorize one or more loans to the California Plastic Pollution Reduction Fund for cashflow purposes subject to the following conditions:

(1) The loans are to allow the departments identified in this section to begin program implementation activities, including, but not limited to, drafting program guidelines and regulations.

(2) The loans are short term, and shall be repaid within 30 days after the deposit of sufficient revenues into the California Plastic Pollution Reduction Fund.

(3) Interest charges may be waived pursuant to subdivision (e) of Section 16314 of the Government Code.

(h) The Department may impose an administrative civil penalty not to exceed fifty thousand dollars (\$50,000) per day on any producer not in compliance with this Act or any of the regulations the Department adopts to implement this Act. Funds collected pursuant to this provision shall be deposited into the California Plastic Pollution Reduction Penalty Account, which is hereby created in the State Treasury. Moneys in the California Plastic Pollution Reduction Penalty Account shall be expended upon appropriation by the Legislature in the annual Budget Act.

(i) The Department shall engage an independent firm of certified public accountants to conduct an annual audit of all accounts and transactions of the Department related to this Act. The audited financial statements shall be presented to the Department and the Controller not more than 120 days after the close of the fiscal year. The independent auditor's report shall be posted on the Department website. The Controller shall conduct quarterly and annual audits and postaudits of all accounts and transactions of the Department related to this Act and other special postaudits as the Controller deems necessary. The Controller or his or her agents conducting an audit in accordance with this Act shall have access and authority to examine any and all records of the Department, the Department's contractors or any other agency or entity receiving money from the California Plastic Pollution Reduction Fund. The Controller may issue a public report of any annual postaudit, which shall be posted on the Controller's website.

(j) A state entity that receives an appropriation or allocation from the California Plastic Pollution Reduction Fund pursuant to this chapter shall use no more than five percent (5%) of that appropriation or allocation for costs related to program administration, including costs associated with the annual independent financial audit, the State Controller's review of the annual independent financial audit, any additional State Controller audits based on findings from the independent financial audit or that the Controller deems necessary, and the allocation and reporting of revenues deposited in the California Plastic Pollution Reduction Fund. The administrative costs shall not include the Department's costs associated with development and implementation of the regulations adopted pursuant to Section 42381(a) and the repayment of loans made from the California Plastic Pollution Reduction Fund.

(k) After deducting costs of collection, administration and enforcement of the fee pursuant to subdivision(a), the revenues deposited into the California Plastic Pollution Reduction Fund shall be distributed as follows:

(1) Twenty percent (20%) of moneys deposited into the California Plastic Pollution Reduction Fund shall be transferred quarterly by the Controller to the Local Government Fund in the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury to be provided to local governments, upon appropriation by the Legislature in the annual Budget Act.

(A) The Local Government Fund shall invest in priority populations as follows:

(i) A minimum of twenty-five percent (25%) of the available moneys in the Local Government Fund shall be allocated to projects located within the boundaries of, and benefiting individuals living in, disadvantaged communities.

(ii) A minimum of five percent (5%) of the available moneys in the Local Government Fund shall be allocated to projects that benefit low-income households or to projects located within the boundaries of, and benefiting individuals living in, low-income communities located anywhere in the state.

(iii) A minimum of five percent (5%) of the available moneys in the Local Government Fund shall be allocated either to projects that benefit low-income households that are outside of, but within one-half mile of, disadvantaged communities or to projects located within the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within one-half mile of, disadvantaged communities.

(B) The Controller shall disburse these allocations as directed by the Legislature, for the following purposes:

(i) Protect groundwater and local clean drinking water supplies from the impacts of plastic pollution.

(ii) Prevent and clean up the impacts of litter and marine plastic pollution on communities and the natural environment.

(iii) Maintain local recycling and composting programs, and increase the amount of material recycled or composted.

(iv) Educate and provide outreach to residents and businesses on waste reduction, recycling, and composting

(v) Provide grants to organizations involved in litter abatement, public education, developing community recycling and composting infrastructure, or designing and deploying reusable system alternatives to single-use plastic foodware.

(2) Fifty percent (50%) of moneys deposited into the California Plastic Pollution Reduction Fund shall be transferred quarterly by the Controller to the Recycling, Composting and Reuse Fund in the California Plastic Pollution Reduction Fund, which is hereby created in the State Treasury for use by the Department to implement and enforce this Act and to specifically support statewide reduction, recycling, and composting efforts and create a supply of recycled materials to support manufacturing of products made from recycled materials. Moneys in the Recycling, Composting and Reuse Fund shall be continuously appropriated without regard to fiscal year. The Department shall develop, and regularly update, a Plastic Pollution Reduction Fee Investment Plan to allocate this funding. The plan shall do all of the following:

(A) Create, improve, and sustain markets for recyclable and compostable materials by developing:

(i) A Plastic Recycling Market Development Program to create new domestic markets for the recycling of plastics that had previously been disposed or exported, and enhance existing plastics recycling infrastructure.

(ii) A Glass Recycling Market Development Program to maintain and increase glass recycling. Not less than half of the revenue dedicated to this program shall be used to provide non-competitive market development payments for the use of recycled cullet in the manufacturing of glass container packaging.

(iii) A Fiber Recycling Market Development Program to maintain and increase the recycling of paper, cardboard and other fiber.

(iv) An Organic Waste Market Development Program to create incentives to maintain and increase the infrastructure for composting food scraps, yard trimmings and other organic waste.

(B) Establish a Circular Economy Grant Program to fund and provide technical assistance to programs that decrease reliance on single-use plastic packaging and that contribute to increased recycling and composting in the state. The Circular Economy Grant Program shall fund:

(i) Recycling and composting infrastructure.

(ii) The deployment of reusable or refillable system alternatives to packaging and single-use plastic foodware.

(iii) Practices by farmers and ranchers that establish healthy soils and water-smart practices, including the production and use of compost, that increase carbon sequestration, reduce greenhouse gas emissions, and improve the health and climate resilience of agricultural landscapes. The Department may contract with other agencies for the distribution of these funds to ensure this program complements and does not supplant existing programs.

(iv) Practices by landowners for the use of compost to support the restoration of degraded landscapes. The Department may contract with other agencies for the distribution of these funds to ensure this program complements and does not supplant existing programs.

(v) Organizations that prevent food waste, recover edible food for human consumption, or reduce food insecurity.

(vi) Organizations that undertake research, create educational and policy programs, or develop innovative solutions aimed at reducing disposal of single-use plastic packaging or mitigating the impacts of single-use plastic packaging waste on the state's natural environment, including streams, rivers, beaches and coastal and ocean environments.

(vii) The Circular Economy Grant Program shall invest in priority populations as follows:

(a) A minimum of twenty-five percent (25 %) of the Circular Economy Grant Program funds shall be allocated to projects located within the boundaries of, and benefiting individuals living in, disadvantaged communities.

(b) A minimum of five percent (5%) of the Circular Economy Grant Program funds shall be allocated to projects that benefit low-income households or to projects located within the boundaries of, and benefiting individuals living in, low-income communities located anywhere in the state.

(c) A minimum of five percent (5%) of the Circular Economy Grant Program funds shall be allocated either to projects that benefit low-income households that are outside of, but within one-half mile of, disadvantaged communities or to projects located within the boundaries of, and benefiting individuals living in, low-income communities that are outside of, but within one-half mile of, disadvantaged communities.

(3) (A) Thirty percent (30%) of the moneys deposited into the Fund shall be transferred quarterly by the Controller to the Environmental Mitigation Account, which is hereby established in the State Treasury, and shall be available to the Natural Resources Agency for grants to state and local public agencies to mitigate the impacts of plastic pollution, and to protect and restore wildlife and the environment including coastal and ocean ecosystems, streams, rivers, and beaches. Moneys in the Environmental Mitigation Account shall be continuously appropriated without regard to fiscal year. Funds allocated pursuant to this paragraph shall be used to restore habitat and wildlife and protect and improve public access to the state's natural resources.

(B) Funds allocated pursuant to this paragraph shall be used to increase and enhance activities described in subparagraph (A) and not replace allocation of other funding for those purposes. Accordingly, General Fund appropriations to the Department of Fish and Wildlife, California Coastal Conservancy, Wildlife Conservation Board, Ocean Protection Council, the Department of Parks and Recreation and the California Natural Resources Agency shall not be reduced below the levels provided in the Budget Act of 2019 (Chapter 40 of Statutes of 2019).

SEC.5. Effective Date.

This Act shall take effect upon approval by the voters of the California Recycling and Plastic Pollution Reduction Act of 2020 as provided in Article II, Sec. 10 of the California Constitution.

SEC. 6. Severability.

The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity

of the remaining portions of this Act. The People of the State of California hereby declare that they would have adopted this Act and each and every portion, section, subdivisions, paragraph, clause, sentence, phrase, word, and application not declared invalid.

SEC. 7. Amendment.

The Legislature may amend the Sections 42380, 42381, and 42382 of the Public Resources Code to further the purposes of the CALIFORNIA RECYCLING AND PLASTIC POLLUTION REDUCTION ACT OF 2020 by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring.